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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,216	01/04/2006	Claude Choquet	21541/0210694-US0	5245

7278 7590 10/27/2009  
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EXAMINER
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SMITH, CAROLYN L

ART UNIT	PAPER NUMBER
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1631

MAIL DATE	DELIVERY MODE
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10/27/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/540,216	<b>Applicant(s)</b> CHOQUET, CLAUDE	
	<b>Examiner</b> Carolyn Smith	<b>Art Unit</b> 1631	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) 12 and 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13-35 and 37-52 is/are rejected.
- 7) ☒ Claim(s) 16 and 40 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>01042006</u> .  | 6) <input type="checkbox"/> Other: _____                          |

Art Unit: 1631

### **DETAILED ACTION**

Applicant's elections with traverse of Specie A (user interface as described in claims 9 and 33) and C (physic law equations that fall under mechanical laws), filed 8/17/09, are acknowledged. Claims 12 and 36 are withdrawn from consideration as being drawn to non-elected species.

Applicant's traversal is on the grounds that applications entering the national stage under 35 USC 371 are subject to PCT rules for unity of invention and that Meuris does not destroy the unity of invention.

The Applicant's request to withdraw the unity of invention species requirements was found unpersuasive because of the following reasons:

As stated in MPEP 1893.03(d),

Note: the determination regarding unity of invention is made without regard to whether a group of inventions is claimed in separate claims or as alternatives within a single claim.

The basic criteria for unity of invention are the same, regardless of the manner in which applicant chooses to draft a claim or claims.

Regarding Applicant's arguments that Meuris does not destroy unity of invention because the Meuris invention is different from the instant invention, Meuris was described to show that the technical features of a user interface and a physic law equation are not special technical features which effectively demonstrate a break in unity.

The requirements are still deemed proper and are therefore made FINAL.

Drawings, filed 6/20/05, are accepted by the Examiner.

Art Unit: 1631

Claims herein under examination are 1-11, 13-35, and 37-52.

### ***Specification***

The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code, such as on page 8, line 13. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

### ***Claim Objections***

Claims 16 and 40 are objected to because of the following minor informality:

Claims 16 and 40 recites "being performed using" which is awkward.

Appropriate correction is requested.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 49-52 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 49-52 are drawn to a computer readable memory, a computer program product comprising memory having computer readable code (i.e. reads on a program), a carrier wave, and memory, respectively. These claims are not directed to one of the four statutory categories.

Art Unit: 1631

In addition, a carrier wave reads on non-statutory subject matter (In re Nuijten 84 USPQ2d 1495 (2007)).

***Claims Rejected Under 35 U.S.C. § 112, Second Paragraph***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11, 13-35, and 37-52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.

Claims 1 (line 14), 23 (line 14), 48 (line 13), 50 (line 13), and 51 (line 13) recite the limitation "the data". There is insufficient antecedent basis for this limitation in the claims, as it is unclear if "the data" in claim 1 is referring to the data in line 3 or line 12. A similar issue is also present in claims 23, 48, 50, and 51. Clarification of this issue via clearer claim wording is requested. Claims 2-11, 13-22, 24-35, 37-46 and 49 are also rejected due to their dependency from claims 1 and 23.

Claims 7 and 31 recite various commas, "and"s, and an "or" which are confusing. It is unclear what limitations are intended to be grouped together and which are intended to be separate. Clarification of this issue via clearer claim wording is requested.

Claims 9 and 33 recite the limitation "the test" in lines 3 and 4, respectively. There is insufficient antecedent basis for this limitation in the claim as there is no previous mention of a

Art Unit: 1631

test. Clarification of this issue via clearer claim wording is requested. Claims 10-11 and 34-35 are also rejected due to their dependency from claims 9 and 33.

Claims 10 and 34 recites the limitation "the test controls" in line 2. There is insufficient antecedent basis for this limitation in the claim. While there is previous mention of "controls", there is no previous mention of "test controls". Clarification of this issue via clearer claim wording is requested.

Claims 17 and 41 recite the limitation "the mouse cursor" in line 3. There is insufficient antecedent basis for this limitation in the claim as there is no previous mention of a mouse cursor. Clarification of this issue via clearer claim wording is requested.

Claims 10, 21, 25, 34 and 45 recite the limitation "the test parameters". There is insufficient antecedent basis for this limitation in the claim. While there is previous mention of "parameters", there is no previous mention of "test parameters". Clarification of this issue via clearer claim wording is requested.

Claims 47 (penultimate line) and 52 (line 11) recite the limitation "using" and "used" which is vague and indefinite. It is unclear what step or steps are encompassed by this limitation. Clarification of this issue via clearer claim wording is requested.

### ***Claim Rejections – 35 USC §102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 1631

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-11, 13-35, and 37-52 are rejected under 35 U.S.C. 102(e) as being anticipated by French et al. (US 2003/0077556 A1).

French et al. disclose a virtual simulator system, method, apparatus, memory, computer program product, and carrier wave for neuromuscular training and certification via a communication network (abstract, 0011, 0043, 0048, 0290, 0368), as stated in the preamble of instant claim 1. French et al. disclose a database storing data and training scenarios complying with a code of conduct, state-of-the-art, physics law equations, technical code and physical activity techniques and connectable to a communication network (0070-0076, 0290, 0368, 0422, 0425), a multimedia device having a stopwatch circuit and input device connectable to a communication network (0026, 0038, 0040, 0041, 0048, 0176-0190, 0206, 0218, 0359, 0362), an online simulator processor connectable to a communication network (0048, 0160, 0290) capable of retrieving data in response to user selection (0076, 0079, 0087, 0152), generating test elements, parameters, and controls based on the data (0076, 0087, 0155, 0304, 0407, 0422), monitoring use of the input device (0009, 0093, 0097, 0117), performing calculations of a simulated environment in response to use of input device and management of test elements, parameters and controls (0077, 0081-0082, 0086, 0098-0099, 0104, 0107, 0112, 0123, 0152, 0153), generating real time images (0123, 0153, 0218, 0224), and recording test elements in the database (0036, 0070), as stated in instant claims 1, 23, and 48-52. French et al. disclose a multimedia device connectable to a virtual simulator system (0026, 0038, 0040, 0041, 0048,

Art Unit: 1631

0176-0190, 0206, 0218, 0359, 0362) having an online simulator processor and database via communication network (0048, 0160, 0290, 0070, 0290, 0368, 0422, 0425) comprising a stopwatch circuit and input device (0026, 0038, 0040, 0041, 0048, 0176-0190, 0206, 0218, 0359, 0362), a user interface (0048), a port (0048), and a processor connected to a stopwatch circuit, input device, user interface, and port (0026, 0038, 0040, 0041, 0048, 0176-0190, 0206, 0218, 0359, 0362) comprising units for transmitting data (0048), receiving test elements, parameters, and controls and simulated environment data (0076, 0087, 0155, 0304, 0407, 0422, 0077, 0081-0082, 0086, 0098-0099, 0104, 0107, 0112, 0123, 0152, 0153), monitoring a management of test elements, parameters, and controls, and displaying real time images (0077, 0081-0082, 0086, 0098-0099, 0104, 0107, 0112, 0123, 0152, 0153, 0218, 0224), as stated in instant claim 47.

French et al. disclose producing warning signals depending on actions by user (0152, 0430), as stated in instant claims 2, 26. French et al. disclose recording and processing real time images (0062, 0069-0071), as stated in instant claims 3 and 27. French et al. disclose analyzing real times images (0062, 0069-0071), comparing test result data with model result data and producing consequent markings and recording markings in the database (0070, 0108, 0306, 0307, 0358, 0379, 0429, 0430), as stated in instant claims 4 and 28. French et al. disclose building and storing a learning curve in the database (abstract, claims 1-7, 0002, 0007, 0011-0013, 0070, 0107, 0344, 0400-0422), as stated in instant claims 5 and 29. French et al. disclose compiling real time images and test elements in a form of playbacks selectively playable (0062, 0069, 0304-0310), as stated in instant claims 6 and 30. French et al. disclose the database is formed of an information system database unit and a virtual database unit (0070, 0305, 0307, 0308-0310, 0368), as stated in instant claims 7 and 31. French et al. disclose the device comprising a user



Art Unit: 1631

interface displaying real time images (0013, 0048, 0066, claim 3), as stated in instant claims 8 and 32. French et al. disclose a process data sheet showing an illustration of the object subjected to a test, instructions, and test elements and parameters (0071, 0083-0085, 0152) and providing test controls for setting up the simulated environment and configuring test parameters (0152), as stated in instant claims 9-10, 25, and 33-34. French et al. disclose illustration is from an animation movie in the database (0067-0071), as stated in instant claims 11 and 35. French et al. disclose processing real time images (0048, 0063-0073), as stated in instant claims 13 and 37. French et al. disclose test elements such as speed and spatial data (0052, 0067, 0075, 0076, 0407), as stated in instant claims 14 and 38. French et al. disclose physical law equations that are mechanical laws (0071, 0075), as stated in instant claims 15 and 39. French et al. disclose an input device comprising a motion capture input device (0048, 0002, 0010) and mouse cursor motion (0048), as stated in instant claims 16-17 and 40-41. French et al. disclose real time images show a progression of test elements from all angles (0062, 0069, 0261, 0424), as stated in instant claims 18 and 42. French et al. disclose test elements, parameters, and controls are configurable by user (0076, 0087, 0074, 0340), as stated in instant claims 19 and 43. French et al. disclose classifying the management of physical activities in the database (0007, 0013, 0070, 0046, 0084, 0091), as stated in instant claims 20 and 44. French et al. disclose managing training scenarios by inputting test parameters, checking until conformity with technical code to produce a valid training scenario, and updating a training scenario (0091, 0160, 0357-0360, 0363-384, 0389-0398, 0077, 0087, 0153, 0157), as stated in instant claims 21, 24, and 45. French et al. disclose selectively providing access to test elements stored in the database (0070, 0076, 0309, 0368-0370), as stated in instant claims 22 and 46.

Art Unit: 1631

Thus, French et al. anticipate the instant invention.

***Other prior art***

Although not being used as prior art, the following reference is being made of record:

Hersh (US 20020106617 A1) describes a multi-media method and system to assess an individual in a virtual work environment using a database, multimedia device, and online simulator processor (abstract, 0073, 0096-0097).

***Conclusion***

No claim is allowed.

Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the PTO Fax Center. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993) (See 37 CFR §1.6(d)). The Central Fax Center number for official correspondence is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

Art Unit: 1631

like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn Smith, whose telephone number is (571) 272-0721. The examiner can normally be reached Monday through Thursday from 8 A.M. to 6:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marjorie Moran, can be reached on (571) 272-0720.

October 20, 2009

/Carolyn Smith/  
Primary Examiner  
AU 1631